



Reprinted  
February 19, 2008

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## ENGROSSED SENATE BILL No. 62

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DIGEST OF SB 62 (Updated February 18, 2008 5:50 pm - DI 101)

**Citations Affected:** IC 24-9; IC 32-29.

**Synopsis:** Posting notice of foreclosure sale. Eliminates the requirement that a sheriff post notice of a foreclosure sale in at least three public places in each township where the real estate is located. Requires notice of a foreclosure sale to be published once each week for three successive weeks in: (1) two daily or weekly newspapers of general circulation published in the county; or (2) if only one newspaper is published in the county, then publication in that newspaper. Provides that payment for publication will be due no sooner than the day after the advertised date of the sale. Requires settlement service providers to make closing documents available to borrowers at least 48 hours before a closing. Requires the settlement service provider to provide, at the same time that the required good faith  
(Continued next page)

**Effective:** July 1, 2008.

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**Steele, Drozda**  
(HOUSE SPONSORS — DEMBOWSKI, FOLEY)

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January 8, 2008, read first time and referred to Committee on Judiciary.  
January 14, 2008, reported favorably — Do Pass.  
January 17, 2008, read second time, amended, ordered engrossed.  
January 18, 2008, engrossed.  
January 22, 2008, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Government and Regulatory Reform.  
February 14, 2008, reported — Do Pass.  
February 18, 2008, read second time, amended, ordered engrossed.

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ES 62—LS 6281/DI 87+



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estimates are provided, notice of the borrower's right to receive the documents 48 hours before the closing. Provides that the borrower may waive the right to receive the closing documents by providing a written notice of waiver at or before the closing. Provides that if terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract. Provides that a settlement service provider is subject to a civil penalty of \$25 for each instance in which the settlement service provider fails to: (1) notify the borrower of the borrower's right to receive the closing documents; or (2) make the closing documents available to the borrower at least 48 hours before the closing. Provides that any penalty assessed shall be paid into the property tax replacement fund.

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February 19, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 62

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A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2008]:

4 **Chapter 4.5. Residential Real Estate Closings**

5 **Sec. 1. This chapter applies to a home loan closing that takes**  
6 **place after June 30, 2008.**

7 **Sec. 2. As used in this chapter, "closing documents" refers to the**  
8 **documents that a settlement service provider is required to provide**  
9 **to a borrower at or before the closing of a home loan, in**  
10 **accordance with the requirements of the federal Real Estate**  
11 **Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.**

12 **Sec. 3. (a) As used in this chapter, "settlement service provider"**  
13 **means a person that provides services in connection with the**  
14 **closing of a real estate transaction, including the provision of title**  
15 **examinations or title insurance.**

16 **(b) The term includes a closing agent (as defined in**  
17 **IC 6-1.1-12-43(a)(2)).**

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1       Sec. 4. A creditor shall provide a prospective borrower with a  
 2       notice that states that the prospective borrower has a right to  
 3       receive, at least forty-eight (48) hours before the closing of a home  
 4       loan, the closing documents with respect to the home loan. The  
 5       creditor shall provide the notice required by this section at the  
 6       same time that the creditor provides the good faith estimates  
 7       required under the federal Real Estate Settlement Procedures Act  
 8       (12 U.S.C. 2601 et seq.), as amended.

9       Sec. 5. (a) Subject to subsection (b), not later than forty-eight  
 10       (48) hours before the closing of a home loan, a settlement service  
 11       provider shall make available to the borrower the closing  
 12       documents with respect to the home loan. The settlement service  
 13       provider shall make the closing documents available to the  
 14       borrower:

- 15           (1) at the office of the creditor or the settlement service
- 16           provider;
- 17           (2) through the United States mail;
- 18           (3) by facsimile; or
- 19           (4) through any other commercially reasonable means.

20       (b) A borrower may waive the right to receive the closing  
 21       documents with respect to a home loan by providing a written  
 22       notice of waiver to the settlement service provider at or before the  
 23       time of closing.

24       (c) If the terms of the home loan set forth in the closing  
 25       documents made available to the borrower under subsection (a)  
 26       differ from the terms of the home loan presented to the borrower  
 27       at the time of the closing, the borrower is entitled to delay or  
 28       reschedule the closing without penalty and without forfeiting the  
 29       right to enter into the loan or, in the case of a purchase money  
 30       home loan, into the purchase contract. For purposes of this  
 31       subsection, "terms", with respect to a home loan, includes any of  
 32       the following:

- 33           (1) The total loan amount.
- 34           (2) The loan's rate, including the trigger rate.
- 35           (3) Points and fees.
- 36           (4) Payment amounts and schedules.
- 37           (5) The term or duration of the loan.
- 38           (6) Prepayment penalties, if any.
- 39           (7) Acceleration provisions.
- 40           (8) Servicing of the loan.
- 41           (9) Other provisions concerning the rights and responsibilities
- 42           of the parties to the home loan.

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1        **Sec. 6. (a) A settlement service provider is subject to a civil**  
 2        **penalty of twenty-five dollars (\$25) for each instance in which the**  
 3        **settlement service provider fails to:**

4            (1) **provide a prospective borrower with the notice required**  
 5            **by section 4 of this chapter; or**

6            (2) **make closing documents available to a borrower as**  
 7            **required by section 5 of this chapter, unless the borrower has**  
 8            **waived the borrower's right to receive the closing documents**  
 9            **under section 5(b) of this chapter.**

10        **(b) A penalty described in subsection (a):**

11            (1) **may be enforced by the state agency that has**  
 12            **administrative jurisdiction over the settlement service**  
 13            **provider in the same manner that the agency enforces the**  
 14            **payment of fees or other penalties payable to the agency; and**

15            (2) **shall be paid into the property tax replacement fund.**

16        **(c) A settlement service provider is not liable for any other**  
 17        **damages claimed by a customer because of the closing agent's**  
 18        **failure to comply with this chapter.**

19        SECTION 2. IC 32-29-7-3, AS AMENDED BY P.L.240-2005,  
 20        SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21        JULY 1, 2008]: Sec. 3. (a) In a proceeding for the foreclosure of a  
 22        mortgage executed on real estate, process may not issue for the  
 23        execution of a judgment or decree of sale for a period of three (3)  
 24        months after the filing of a complaint in the proceeding. However:

25            (1) the period is:

26                    (A) twelve (12) months in a proceeding for the foreclosure of  
 27                    a mortgage executed before January 1, 1958; and

28                    (B) six (6) months in a proceeding for the foreclosure of a  
 29                    mortgage executed after December 31, 1957, but before July  
 30                    1, 1975; and

31            (2) if the court finds that the mortgaged real estate is residential  
 32            real estate and has been abandoned, a judgment or decree of sale  
 33            may be executed on the date the judgment of foreclosure or  
 34            decree of sale is entered, regardless of the date the mortgage is  
 35            executed.

36        (b) A judgment and decree in a proceeding to foreclose a mortgage  
 37        that is entered by a court having jurisdiction may be filed with the clerk  
 38        in any county as provided in IC 33-32-3-2. After the period set forth in  
 39        subsection (a) expires, a person who may enforce the judgment and  
 40        decree may file a praecipe with the clerk in any county where the  
 41        judgment and decree is filed, and the clerk shall promptly issue and  
 42        certify to the sheriff of that county a copy of the judgment and decree

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under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in ~~a daily or weekly newspaper of general circulation. The two (2) daily or weekly newspapers of general circulation published in the county where the real estate is situated. If there is only one (1) newspaper published in the county, publication in that newspaper alone is sufficient. Payment for publication is due not sooner than the day after the advertised date of the sale. If the property is situated in more than one (1) county, the~~ sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected; and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale ~~in at least three (3) public places in each township in which the real estate is situated and~~ at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement,

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1 for informational purposes only, of the location of each property by  
2 street address, if any, or other common description of the property other  
3 than legal description. A misstatement in the informational statement  
4 under this subsection does not invalidate an otherwise valid sale.

5 (h) The sheriff may charge an administrative fee of not more than  
6 two hundred dollars (\$200) with respect to a proceeding referred to in  
7 subsection (b) for actual costs directly attributable to the administration  
8 of the sale under subsection (c). The fee is:

9 (1) payable by the person seeking to enforce the judgment and  
10 decree; and

11 (2) due at the time of filing of the praecipe;  
12 under subsection (b).

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## SENATE MOTION

Madam President: I move that Senator Drozda be added as coauthor of Senate Bill 62.

STEELE

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 COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 62, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 62 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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 SENATE MOTION

Madam President: I move that Senate Bill 62 be amended to read as follows:

Page 2, line 19, strike "a daily or weekly newspaper of general circulation. The " and insert "**two daily or weekly newspapers of general circulation published in the county where the real estate property is situated. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient. Payment for publication will be due no sooner than the day after the advertised date of the sale. If the property is situated in more than one county, the**".

(Reference is to SB 62 as printed January 15, 2008.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 62, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEVENSON, Chair

Committee Vote: yeas 9, nays 0.

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 HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 62 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 4.5. Residential Real Estate Closings**

**Sec. 1. This chapter applies to a home loan closing that takes place after June 30, 2008.**

**Sec. 2. As used in this chapter, "closing documents" refers to the documents that a settlement service provider is required to provide to a borrower at or before the closing of a home loan, in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.**

**Sec. 3. (a) As used in this chapter, "settlement service provider" means a person that provides services in connection with the closing of a real estate transaction, including the provision of title examinations or title insurance.**

**(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).**

**Sec. 4. A creditor shall provide a prospective borrower with a notice that states that the prospective borrower has a right to receive, at least forty-eight (48) hours before the closing of a home loan, the closing documents with respect to the home loan. The creditor shall provide the notice required by this section at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.**

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**Sec. 5. (a)** Subject to subsection (b), not later than forty-eight (48) hours before the closing of a home loan, a settlement service provider shall make available to the borrower the closing documents with respect to the home loan. The settlement service provider shall make the closing documents available to the borrower:

- (1) at the office of the creditor or the settlement service provider;
- (2) through the United States mail;
- (3) by facsimile; or
- (4) through any other commercially reasonable means.

**(b)** A borrower may waive the right to receive the closing documents with respect to a home loan by providing a written notice of waiver to the settlement service provider at or before the time of closing.

**(c)** If the terms of the home loan set forth in the closing documents made available to the borrower under subsection (a) differ from the terms of the home loan presented to the borrower at the time of the closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or, in the case of a purchase money home loan, into the purchase contract. For purposes of this subsection, "terms", with respect to a home loan, includes any of the following:

- (1) The total loan amount.
- (2) The loan's rate, including the trigger rate.
- (3) Points and fees.
- (4) Payment amounts and schedules.
- (5) The term or duration of the loan.
- (6) Prepayment penalties, if any.
- (7) Acceleration provisions.
- (8) Servicing of the loan.
- (9) Other provisions concerning the rights and responsibilities of the parties to the home loan.

**Sec. 6. (a)** A settlement service provider is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the settlement service provider fails to:

- (1) provide a prospective borrower with the notice required by section 4 of this chapter; or
- (2) make closing documents available to a borrower as required by section 5 of this chapter, unless the borrower has

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waived the borrower's right to receive the closing documents under section 5(b) of this chapter.

**(b) A penalty described in subsection (a):**

**(1) may be enforced by the state agency that has administrative jurisdiction over the settlement service provider in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and**

**(2) shall be paid into the property tax replacement fund.**

**(c) A settlement service provider is not liable for any other damages claimed by a customer because of the closing agent's failure to comply with this chapter."**

Page 2, line 19, after "two" insert **"(2)"**.

Page 2, line 21, delete "property".

Page 2, line 22, delete "then".

Page 2, line 23, delete "will be" and insert **"is"**.

Page 2, line 24, delete "no" and insert **"not"**.

Page 2, line 25, after "one" insert **"(1)"**.

Renumber all SECTIONS consecutively.

(Reference is to ESB 62 as printed February 15, 2008.)

MURPHY

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